

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-7119

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-7119

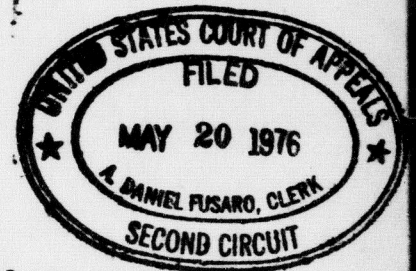
JACK SOBEL, as the sole surviving
General Partner of Great River
Country Club Associates,

Plaintiff-Appellant,

-against-

HONORABLE DAVID L. GLICKMAN, a
Justice of the Supreme Court of
the State of New York, Tenth
District,

Defendant-Appellee.



ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

=====

ABBREVIATED RECORD ON APPEAL

=====

JACOB OLINER
Attorney for Plaintiff-
Appellant
60 East 42nd Street
New York, New York 10017
(212) 867-7720

PAGINATION AS IN ORIGINAL COPY

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NEW
SECTION FIVE
BIOGRAPHIC FOND
Cammilleri

COMPLAINT

R-1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
JACK SOBEL, as the sole surviving
General Partner of Great River Country
Club Associates,

Plaintiff,

Civil Action No. 76 C 440

-against-

HONORABLE DAVID L. GLICKMAN, a
Justice of the Supreme Court of the
State of New York, Tenth District,

COMPLAINT

WEINSTEIN, J.

Defendant.

-----x
The plaintiff, complaining of the defendant, respectfully alleges:

JURISDICTION

1. Jurisdiction of the Court is invoked under Title 28, United States Code, Sections 1331 and 1343, this being a suit in equity authorized by law, Title 42, United States Code, Section 1983, to redress the deprivation under color of statute, ordinance, regulation, custom or usage of a State of rights, privileges, and immunities secured by the Constitution and Laws of the United States. The rights, privileges and immunities sought herein to be redressed are those secured by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States. The matter in contro-

versy, exclusive of interest and costs, exceeds the sum of Ten Thousand (\$10,000.00) Dollars.

CLAIM

2. Plaintiff herein is a plaintiff in an action in the Supreme Court of the State of New York, Suffolk County, entitled: "JACK SOBEL, as the Sole Surviving General Partner of GREAT RIVER COUNTRY CLUB ASSOCIATES, Plaintiff, against JOHN BESS and TIMBER POINT COUNTRY CLUB, INC., Defendants." in which action accountings by the defendants and objections thereto are now pending and undetermined.

3. That the defendant is a Justice of the Supreme Court of the State of New York, Tenth District, has presided and intends to continue to preside at the trial on the accountings and objections thereto in the aforesaid action.

4. That prior to the commencement of said trial and on or about October 14, 1975 plaintiff moved before the defendant to disqualify himself from hearing the case on the grounds of personal bias and prejudice against the plaintiff and hostility towards plaintiff's counsel by reason of a prior complaint to the Temporary State Commission on Judicial Conduct and other grounds, that defendant denied said motion, and directed plaintiff to proceed with the trial of the case of November 10, 1975.

R-3.

COMPLAINT

5. That the aforesaid trial was held before the defendant on November 10, November 12 and November 13, 1975 and adjourned; that defendant demonstrated partiality against the plaintiff and an attitude of advocacy in favor of the defendants at such trial, and defendant was not, and is not, a fair and impartial judge in the said matter.

6. That plaintiff has no means to finance an appeal from the determination of the defendant and is unable to pay the costs of the transcript of the trial; that plaintiff moved before the defendant under the provisions of the Civil Practice Law and Rules of the State of New York for leave to proceed as a poor person, which motion was denied by defendant.

7. That plaintiff herein brought on a proceeding in the nature of a Writ of Prohibition in the Appellate Division of the Supreme Court of the State of New York, Second Department, to remove the defendant from presiding at the trial of the said accountings and objections thereto, a copy of which and supporting affidavit is annexed and made a part of this complaint.

8. That the said proceeding was dismissed by the Appellate Division, Second Department in a decision, dated January 16, 1976, reading:

"Proceeding dismissed on the merits, without costs. An Article 78 proceeding does not lie to remove a judge from hearing a case on the grounds presented."

9. That plaintiff filed a Notice of Appeal from the said decision to the Court of Appeals of the State of New York, and applied to the Appellate Division, Second Department for a stay of trial before the defendant and for leave to appeal, which application was denied by the Appellate Division, dated March 3, 1976; and a temporary stay of the trial of the aforesaid action before the defendant was declined by the Chief Judge of the Court of Appeals of the State of New York on March 4, 1976.

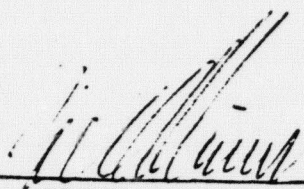
10. That the defendant intends to continue to preside at the aforesaid trial; that by reason of his bias and hostility towards the plaintiff, the plaintiff would be irreparably harmed and deprived of a fair hearing and the due process and equal protection guaranteed by the Fourteenth Amendment of the Constitution of the United States; for all of which the plaintiff herein has no adequate remedy in the courts of the State of New York.

WHEREFORE, plaintiff asks for judgment permanently enjoining the defendant from presiding at the trial on the accountings and objections thereto in an action now pending in the Supreme Court of the State of New York, County of Suffolk entitled: "JACK SOBEL, as the Sole Surviving General Partner of GREAT RIVER COUNTRY CLUB ASSOCIATES, Plaintiff, against

JOHN BESS and TIMBER POINT COUNTRY CLUB, INC., Defendants."

and for such other and further relief as shall be just and proper.

Dated: New York, New York
March 4, 1976



JACOB OLINER

Attorney for Plaintiff
60 East 42nd Street
New York, New York 10017
212-867-7720

APPELLATE DIVISION OF THE SUPREME COURT
SECOND JUDICIAL DEPARTMENT

-----x

In the Matter of Jack Sobel, as the
Sole Surviving General Partner of
GREAT RIVER COUNTRY CLUB ASSOCIATES,

Petitioner,

-against-

NOTICE OF PETITION

HONORABLE DAVID L. GLICKMAN, a
Justice of the Supreme Court in
the Tenth District,

Respondent.

-----x

S I R :

PLEASE TAKE NOTICE, that upon the annexed verified
petition and the annexed affidavit of Jacob Oliner, Esq.,
sworn to the 11th day of December, 1975, an application will
be made to the Appellate Division of the Supreme Court,
Second Department, to be held at its Courthouse at 7 Monroe
Place, Brooklyn, New York, on the *2nd* day of January, 1976,
at 9:30 A.M., or as soon thereafter as counsel can be heard,
for a judgment restraining the respondent from presiding at
the hearing on an accounting and objections thereto, in an
action now pending in the Supreme Court, Suffolk County,
entitled "Jack Sobel as the Sole Surviving General Partner

of Great River Country Club Associates, plaintiff, against John Bess and Timber Point Country Club, Inc., defendants", and directing the respondent to disqualify himself from hearing and determining the issues on the said accounting on the grounds that the respondent lacks jurisdiction in the said matter in that (a) he has a personal bias and prejudice in favor of the defendants with a design to perpetuate the defendant, John Bess and his family in the ownership of the assets of a trust and receivership, for which said John Bess was directed to account as Trustee and Receiver; (b) that he has manifested hostility towards the petitioner, plaintiff in that action, and Jacob Oliner, Esq., plaintiff's attorney, on the ground that the said attorney has filed a complaint against the respondent with the Temporary State Commission on Judicial Conduct; (c) that respondent is about to exceed his jurisdiction in that he will defy the order of reversal of the Appellate Division, Second Department in the aforesaid action, and has indicated that the respondent will consider on the accounting directed by the Appellate Division, Second Department, only the interest of Jack Sobel personally, and will not treat the accounting as one to the partnership; (d) that respondent has denied, and is about

to deny due process to the petitioner, plaintiff in that action, in that the respondent has made it economically impossible for the petitioner to proceed with the trial on the aforesaid accounting; and (e) that the respondent has announced off the bench that if a stay of trial be sought in the accounting proceeding by the petitioner, plaintiff in that action, that he would personally intercede in opposition to such application, and that petitioner have such other and further relief as shall be just and proper.

PLEASE TAKE FURTHER NOTICE, that you are required to serve a verified answer and supporting affidavits, if any, at least five (5) days before the hearing hereof, and that pursuant to Section 7804 Civil Practice Law and Rules, the respondent is required to file with the Clerk of the Court a certified transcript of the record of the proceeding, together with the entire official file containing the records in the aforesaid action held by the respondent.

Dated: New York, New York
December 11, 1975.

Yours etc.,

JACOB OLINER
Attorney for Petitioner
60 East 42nd Street
New York, N.Y. 10017
Tel. 867-7720

TO: HONORABLE DAVID L. GLICKMAN
A Justice of the Supreme Court
23 Green Street
Huntington, New York 11743

APPELLATE DIVISION OF THE SUPREME COURT
SECOND JUDICIAL DEPARTMENT

-----x

In the Matter of

JACK SOBEL, as the Sole Surviving
General Partner of GREAT RIVER
COUNTRY CLUB ASSOCIATES,

Petitioner,

PETITION

-against-

HONORABLE DAVID L. GLICKMAN, a
Justice of the Supreme Court in
the Tenth District,

Respondent.

-----x

JACK SOBEL, as the sole surviving general partner
of Great River Country Club Associates, petitioner herein,
complaining of the respondent, respectfully alleges:

1. That your petitioner is the sole surviving
general partner of Great River Country Club Associates, a
limited partnership in dissolution.
2. That the respondent is a Justice of the Supreme
Court of the State of New York in the Tenth Judicial District.
3. That an action is pending in the Supreme Court,
Suffolk County, entitled "Jack Sobel, as Sole Surviving
General Partner of Great River Country Club Associates,
plaintiff, against John Bess and Timber Point Country Club,
Inc., defendants"; that in the said action, the defendants

therein are required to file an accounting.

4. That John Bess, one of the defendants in that action, was appointed by an arbitration award dated December 8, 1961, Receiver and Trustee of all the property of Great River Country Club Associates, with full power to wind up and sell the partnership assets after December 15, 1961, which arbitration award was confirmed by an Order of the Supreme Court of the State of New York, County of New York, dated December 29, 1961.

5. That the assets of Great River Country Club Associates, the said partnership, consisted of an installment purchase contract of certain real property in Great River, Suffolk County, New York, being operated as a country club and golf course.

6. That John Bess, the aforesaid Trustee and Receiver, caused title to be conveyed to the said country club under the purchase contract belonging to the partnership, to Timber Point Country Club, Inc., a corporation organized by himself and operated the said country club in the name of the said corporation.

7. That heretofore and on or about January 31, 1964, your petitioner commenced an action against John Bess and Timber Point Country Club, Inc. in the Supreme Court,

Suffolk County, for a declaration that Timber Point Country Club, Inc. be adjudged to hold title to the country club property for the benefit of Great River Country Club Associates, the limited partnership; that it be decreed to convey the said property to the partnership, and that John Bess and Timber Point Country Club, Inc. account for all monies and profits received by them from the said property while in possession thereof.

8. That the said action came on to be tried before the Honorable David L. Glickman in the Supreme Court, Suffolk County, in or about the month of January 1966; that the action was settled by stipulation, and an Interlocutory Judgment was made in the said action on the 9th day of February, 1966.

9. That by the terms of the said Interlocutory Judgment, the defendant John M. Bess, was directed to render and file an account of his proceedings as Trustee and Receiver of Great River Country Club Associates.

10. That in or about the month of January, 1970, your petitioner commenced a proceeding in the Supreme Court, New York County, the Court which had appointed John Bess as Trustee and Receiver, seeking therein, on behalf of himself and all limited partners of Great River Country Club Associates, a construction of the rights and duties of John Bess,

as Trustee and Receiver, and an adjudication that the partners of Great River Country Club Associates are the beneficial owners of the shares of common stock of Timber Point Country Club, Inc. and a distribution of the said common stock to the general and limited partners of Great River Country Club Associates in the proportion of their respective interests.

11. That the said proceeding commenced in the Supreme Court, New York County, was stayed by an Order of the Appellate Division, First Department, pending the determination of the accounting of John Bess, as Trustee and Receiver in the Suffolk County action.

12. That John Bess and Timber Point Country Club, Inc. filed and served several accounts, one designated "Final Account" covering the period from December 15, 1961 through April 1974, and your petitioner filed objections to each such account.

13. That one of the objections to the account of John Bess, as Trustee and Receiver, was that he failed to list the common stock in Timber Point Country Club, Inc. as an asset of the receivership, and failed to set forth the names and addresses of the beneficiaries.

14. That the defendants in the aforesaid action moved for partial summary judgment to strike the said ob-

jections pertaining to the common stock in Timber Point Country Club, Inc.; that the said motion was referred to the respondent herein, sitting as a Justice of the Supreme Court, Suffolk County, who granted the said motion, struck the said objection, and granted partial summary judgment in favor of the defendants.

15. That on appeal from the said partial judgment, the Appellate Division, Second Department, reversed, and remanded the matter to the respondent herein to hear and determine the accounting, and to clarify in the said accounting an inconsistency between the fifth and sixth decretal paragraph of the Interlocutory Judgment made by the respondent on February 9, 1966.

16. That the hearing was held before the respondent, pursuant to the remand by the Appellate Division, Second Department, upon which, by consent of the parties, the issues were limited to the resolution of the inconsistency between the fifth and sixth decretal paragraphs of the said Interlocutory Judgment.

17. That after the hearing on the said issue, and after a five-month delay, the respondent held for the defendant and adjudged that John Bess was the beneficial owner of the common stock of Timber Point Country Club, Inc., and

that the said common stock was not part of the receivership, and entered an Interim Decree to that effect.

18. That upon appeal from the said Interim Decree, the Appellate Division, Second Department, substantially reversed and directed John Bess, as Trustee and Receiver, to account for the common stock in Timber Point Country Club, Inc. as part of the receivership.

19. That John Bess did file an "accounting of the common stock" on or about August 4, 1975, and your petitioner filed objections thereon on August 14, 1975. Your petitioner moved in the Supreme Court, Suffolk County, to join the limited partners shown in the said account as beneficiaries of the common stock, as parties to the accounting, which motion was referred to the respondent herein, who promptly denied the motion, and set the matter down for trial, sua sponte, for October 14, 1975.

20. That on October 14, 1975, your petitioner's attorney moved that the respondent disqualify himself from hearing and determining the accounting on the grounds that he was biased and prejudiced in favor of the defendants in the action; that he had expressed a view that the Trustee and Receiver was entitled to a profit; that in deciding the motion to strike the objection of your petitioner with

respect to the common stock in Timber Point Country Club, Inc., the respondent had disregarded basic principles of law, and had failed to consider compelling evidence on the hearing; that the respondent was aware that petitioner's attorney had filed a complaint against him with the Temporary State Commission on Judicial Conduct, and that the respondent must, therefore, harbor ill feelings towards petitioner's attorney; that the delay in this matter was principally caused by the respondent himself, who denied the motion for the distribution of the common stock in Timber Point Country Club, Inc. in December of 1970 as premature, and that the several decisions by the respondent deprived the petitioner from the proper preparation of the trial. That respondent refused to disqualify himself, and upon application of petitioner's attorney for an adjournment for two weeks, adjourned the trial to November 10, 1975.

21. That the trial commenced on November 10, 1975 was held on that day and on November 12th and November 13th, 1975, and that respondent, who presided at the said trial, again demonstrated such bias and prejudice in favor of the defendant John Bess; that an impartial trial cannot be held before him, and that by reason thereof, the respondent lacks jurisdiction to hear and determine the accounting in the aforesaid action.

22. That the respondent, on the trial of the said accounting, stated from the bench that he would determine in this account no more than the interest of Jack Sobel, and rejected the argument of petitioner's attorney that this was a partnership action, and the respondent clearly indicated that he would defy the order of reversal of the Appellate Division, Second Department, which required the defendant, John Bess, to account for the common stock as a receivership asset.

23. That it became clear to petitioner's attorney that another appeal was required from an adverse determination by the respondent; that the petitioner made an application returnable before the respondent for leave to proceed as a poor person so as to be able to obtain the transcript of the trial at the expense of the County of Suffolk; that the attorney for the County of Suffolk was duly served with such application, and filed no objections thereto; that the respondent denied the motion on the alleged ground that Jeremiah F. Cross, one of the parties listed in the "accounting of the common stock" as a beneficiary was not shown to be a poor person, whereas, the respondent had refused the beneficiaries on the accounting to be joined as parties, and has indicated from the bench that he would determine no

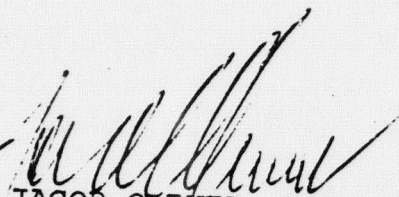
more than Jack Sobel's individual interest in this accounting.

24. That by reason of the fact that your petitioner is unable to afford the costs of an appeal, the respondent has deprived him of due process within the meaning of Britt v. North Carolina, 404 U.S. 226; 92 S.Ct. 431; 30 L.E. 2d 400, and that the rights of the petitioner cannot adequately be protected by an appeal from the final determination, since your petitioner cannot afford the legal services or the expense of such appeal, and will have to abandon his rights and the rights of the partnership as against a dishonest Trustee and Receiver thereof.

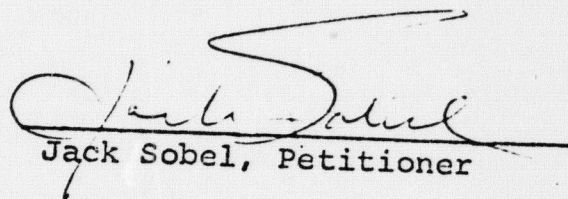
25. That the respondent is acting without jurisdiction in hearing and determining the accounting by reason of the fact that he is guided by personal ill feelings towards the petitioner and his attorney in violation of Section 33.3(c) of the Rules of the Administrative Board of the Judicial Conference of the State of New York, effective January 1, 1974.

WHEREFORE, petitioner asks for a judgment restraining the respondent from hearing and determining the accounting

in the action referred to above, and directing him to dis-
qualify himself on the grounds set forth in the Notice of
Petition herein.



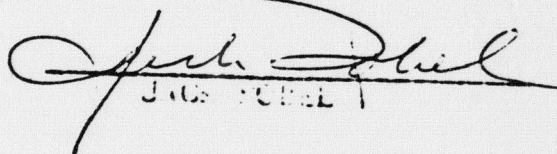
JACOB OLINER, ESQ.
Attorney for Petitioner
60 East 42nd Street
New York, New York 10017



Jack Sobel, Petitioner

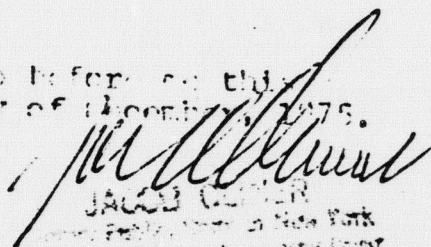
THE COURT, being duly sworn, deposes and says that

he is the petitioner herein, that he has read the foregoing
petition and knows the contents thereof; that the same is true
to his own knowledge, except as to matters therein stated to be
alleged upon information and belief and as to those matters
he believes it to be true.



JACK SOBEL

Sworn to before me this
11th day of December, 1975.



JACOB OLINER
Attorney for Petitioner
60 East 42nd Street
New York, New York 10017

APPELLATE DIVISION OF THE SUPREME COURT
SECOND JUDICIAL DEPARTMENT

In the Matter of

JACK SOBEL, as the Sole Surviving
General Partner of GREAT RIVER
COUNTRY CLUB ASSOCIATES,

Petitioner,

-against-

AFFIDAVIT

HONORABLE DAVID L. GLICKMAN, a
Justice of the Supreme Court in the
Tenth District,

Respondent.

STATE OF NEW YORK)
COUNTY OF NEW YORK) : SS.:

JACOB OLINER, being duly sworn, deposes and says:

I am the attorney for the petitioner herein, and make this affidavit in support of a Writ of Prohibition to restrain the Honorable David L. Glickman from hearing and determining the accounting in an action before him, in which Jack Sobel, as the sole surviving general partner of Great River Country Club Associates, as plaintiff, and John Bess and Timber Point Country Club, Inc., are defendants.

The action came on to be tried before the respondent on November 10, November 12 and November 13, 1975, after the

respondent had previously denied your deponent's motion to disqualify himself on the ground of bias and prejudice, and on the further ground that he was aware that your deponent had filed a complaint with the Temporary State Commission on Judicial Conduct against him. It clearly became apparent that the trial before the respondent was a mere charade, and that the respondent was not an impartial judicial officer.

There were before the Court four accountings and objections thereto. Your deponent cross-examined John Bess with respect to the first account for the period from December 15, 1961 to December 31, 1965, and it immediately appeared that the Trustee defendant had omitted to show as a receipt in the said accounting the proceeds of a mortgage in excess of \$150,000; that the Trustee defendant had shown as an advance by him out of his own funds the sum of \$8,219.07 for insurance, and had failed to show as repayment to himself the very same sum out of the funds of the receivership only two weeks later; That the defendant trustee has shown in the account an alleged payment of \$11,000 out of funds of his own, as an advance to the receivership in or about the month of March 1962, while in fact that payment was made out of the receivership funds; that the Trustee defendant paid the sum

of \$2,500 to a corporation controlled by him out of the receivership funds, and did not show such payment as a repayment to himself as against alleged advances. It was also shown that the receipts alleged for the period of December 15, 1961 to March 1963 were those received by December 25, 1962. On all these facts, deponent moved the Court to direct an amended account for the first accounting period, which the respondent simply denied.

It was also shown at the trial that the Trustee defendant had entered into a lease with Timber Point Country Club, Inc., a corporation controlled by him for the operation of the country club, from January 1, 1963; that the corporation was required to make certain payments under the lease, none of which the Trustee defendant collected, and deponent's motion to surcharge the Trustee receiver for his omission to collect these payments were denied by the respondent. When your deponent attempted to solicit on cross-examination of the Trustee defendant that a certain dividend on preferred stock was declared which was payable to the preferred stockholders of Timber Point Country Club, Inc. but were in fact paid to the wife of the Trustee defendant, the Court sustained its own objection and further stated that if the facts which

your deponent attempted to establish were correct, the Trustee defendant would have committed a criminal act and could invoke the privilege against self-incrimination. No such objection was raised by the attorney for the defendant (Trustee Receiver), but the Court, on its own motion, acted as the advocate of the defendant.

Your deponent suffers a heart condition, and after three days trial in the outlying County of Suffolk, your deponent was exhausted and sought medical help the day after the trial. Your deponent's physician advised rest for the next four weeks, and your deponent wrote a letter to the respondent asking for a four-week adjournment of the trial on medical grounds. My office received a telephone call from the Secretary of the respondent that I was required to appear in person for the application of the adjournment, but I had Eugene Blumberg, Esq. appear in my stead, who made the application. I was advised by Mr. Blumberg that respondent indicated that were I to apply for a stay of the trial, that he would personally intercede in opposition thereto. The general impression of Mr. Blumberg, as I understood him to perceive the respondent's attitude was that Mr. Justice Glickman was not favorably inclined towards your deponent.

This case is of such complexity and of so many details which your deponent covered over five years' association with the matter, that it is an impossible burden upon him to continue with this matter for any length of time. Your deponent has inquired of younger counsel whether he would prepare to assume the function as counsel for the plaintiff but in the light of the financial condition of the plaintiff, who cannot afford the payment of counsel fees, and the decision by the respondent denying leave to the plaintiff to proceed as a poor person, deponent could find nobody willing to be substituted as the attorney for the plaintiff in that action.

It is your deponent's respectful submission that plaintiff can receive no justice from the respondent herein; that the respondent is acting beyond his jurisdiction in not disqualifying himself for his ill feelings towards the plaintiff and his counsel; that respondent is about to defy the Order of the Appellate Division, Second Department, and that the respondent has with an ill will denied to the plaintiff the right to proceed as a poor person, which in effect constitutes a denial of due process to the plaintiff.

It is impossible, in your deponent's opinion, to redress the injustice which will occur to the plaintiff by

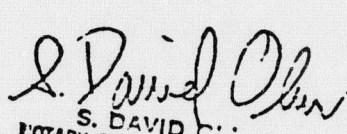
an appeal, since plaintiff's financial resources are nill,
and the efforts of your deponent as his counsel will shortly
be exhausted for reason of ill health.

This matter can come to a conclusion only by the
requirement of an amended account to be filed by the defendants,
and an impartial hearing by a judge having no prejudices against
the plaintiff.

WHEREFORE, deponent respectfully prays that the
Writ of Prohibition be granted.

Sworn to before me this
11th day of December, 1975.



Jacob Oliner
S. DAVID OLIN
NOTARY PUBLIC, State of New York
No. 4504441
Qualified in Westchester County
Term Expires March 30, 1977

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
JACK SOBEL, as the sole surviving
General Partner of Great River Country
Club Associates,

Plaintiff,

Civil Action No.

-against-

76 C 440

HONORABLE DAVID L. GLICKMAN, a
Justice of the Supreme Court of the
State of New York, Tenth District,

ORDER TO SHOW CAUSE

Defendant.
-----x

Upon the Summons and Complaint filed herein and the
annexed affidavit of Jacob Oliner, Esq., sworn to the 4th day
of March, 1976, and exhibit thereto annexed, it is,

ORDERED, that the defendant show cause before this
Court at a Motion Term to be held at the Courthouse of this
Court, at 225 Cadman Plaza East, Brooklyn, New York on the
day of March, 1976, at M., of as soon thereafter
as counsel can be heard, why an Order should not be made,
restraining the defendant from proceeding with the trial of
the accounting and objections thereto in an action in the
Supreme Court of the State of New York, Suffolk County, entitled:
"JACK SOBEL, as the Sole Surviving General Partner of GREAT
RIVER COUNTRY CLUB ASSOCIATES, Plaintiff, against JOHN BESS and

TIMBER POINT COUNTRY CLUB, INC., Defendants.", pending the hearing and determination of this action; and it is further

ORDERED, that pending the hearing and determination of this motion, the defendant be and hereby is restrained from proceeding with the trial of the accounting and objections thereto in the aforesaid action; and it is further

ORDERED, that service of a copy of this Order, together with the affidavits upon which it was granted, upon the defendant, on or before March ,1976, shall be deemed sufficient.

Dated Brooklyn, New York
March ,1976

U.S.D.J.

The motion is denied after a hearing. Upon the court's own motion the action is dismissed. *cf. eq. Mitchell v. Fort* 118 - - 92 SC 2151, 2162 (1972) *Burger* Th. J. concurring. In view of the plaintiff's lack of funds, as established at the hearing, he may proceed in forma pauperis.

March 5, 1976.

Jack B. Weinstein
US dj

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
JACK SOBEL, as the sole surviving
General Partner of Great River Country
Club Associates,

Plaintiff,

-against-

AFFIDAVIT

HONORABLE DAVID L. GLICKMAN, a
Justice of the Supreme Court of the
State of New York, Tenth District,

Defendant.

-----x
STATE OF NEW YORK :
COUNTY OF NEW YORK : S.S.:

JACOB OLINER, being duly sworn, deposes and says:

I am the attorney for the plaintiff and am fully
familiar with the facts involved in this action which seeks
a permanent injunction against the defendant, a Justice of the
Supreme Court of the State of New York, from presiding at a
trial on the ground of bias, prejudice and hostility.


This affidavit is made in support of an application
for a preliminary restraining order pending the trial of this
action. The facts upon which this relief is sought are set forth
in the complaint and exhibit thereto. For the background of this
matter, deponent takes the liberty of attaching deponent's

affidavit of March 3, 1976, which was intended to be presented to the Chief Judge of the Court of Appeals of the State of New York on an application for a temporary stay, but the said Chief Judge advised deponent that he would not grant said temporary stay.

It is respectfully submitted that the Court of the State of New York are depriving the plaintiff of due process by failing to provide a fair and impartial hearing in the Suffolk County action and that the only remedy is recourse to the Federal Courts.

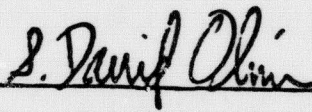
No prior application has been made to this Court for the relief requested herein.

WHEREFORE, deponent asks for a restraining order pending the trial of this action and a preliminary stay pending the hearing and determination of is motion.



JACOB OLINER

Sworn to before me this
4th day of March, 1976



S. DAVID OLINER
NOTARY PUBLIC, State of New York
NO. 3504441
Qualified in Westchester County
Expires March 30, 1977

COURT OF APPEALS
STATE OF NEW YORK

----- X

In the Matter of Jack Sobel, as the
sole surviving General Partner of
GREAT RIVER COUNTRY CLUB ASSOCIATES,

Petitioner-Appellant,

-against-

AFFIDAVIT

HONORABLE DAVID L. GLICKMAN, a Justice
of the Supreme Court in the Tenth
District,

Respondent-Respondent.

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STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:-

JACOB OLINER, being duly sworn, deposes and says:

I am the attorney for the Petitioner-Appellant herein
and make this affidavit in support of a motion for a stay of
proceeding before the Respondent-Respondent in a trial on an
accounting and objections thereto, in an action now pending
in the Supreme Court, Suffolk County, pending the determination
of an Appeal.

This is an Article 78 proceeding in the nature of a
Writ of Prohibition to remove the Respondent-Respondent from
presiding at the trial of an accounting and objections thereto

on the ground of his personal bias and prejudice; hostility towards plaintiff's attorney, who had filed a complaint against the Respondent-Respondent with the Temporary State Commission on Judicial Conduct, and that Respondent-Respondent has indicated, in defiance of an Order of Reversal of the Appellate Division, Second Department, that he would consider on an accounting directed by the Appellate Division, only the interest of Jack Sobel personally and not treat the accounting as one to the partnership, and other allegations of judicial partiality. The Appellate Division, Second Department, in which the Petition was made in the first instance, dismissed the Petition on the merits (Exhibit A), and the Petitioner-Appellant filed a Notice of Appeal therefrom to this Court on constitutional grounds (Exhibit B). A copy of the Notice of Petition (Exhibit C), of the Petition (Exhibit D) and of the affidavit in support thereof (Exhibit E) are annexed.

The Order of Dismissal of the Petition by the Appellate Division, Second Department, must be construed as meaning that the allegations of the Petition and of the affidavit of Jacob Oliner, Esq., in support thereof, are insufficient in law to require the removal of a judicial officer. It is respectfully submitted that the requirement of an impartial trial in our

judicial system raises the question of due process under the constitutions of both this State, as well as of the United States of America.

This matter involves a litigation of more than ten (10) years and a short statement of the background is as follows:

Jack Sobel is the sole surviving General Partner of Great River Country Club Associates, a Limited Partnership, which owned a certain lease and purchase contract pertaining to a country club in Great River, New York, consisting of approximately 200 acres of land, a Clubhouse, golf course and other facilities. The Country Club had a substantial beach frontage on the Atlantic Ocean. The Limited Partnership consisted originally of three General Partners of which Jack Sobel is the sole surviving General Partner and approximately 110 Limited Partners who invested money through a public offering. John Bess was the Underwriter in the public offering and it was through his efforts that an original capital of \$300,000 was raised through such syndication. In 1961, one of the Limited Partners brought on an arbitration proceeding seeking the removal of Jack Sobel as a General Partner and the liquidation of the Partnership. The arbitration proceeding was settled, under which John Bess was appointed Trustee and Receiver to sell and wind up the Partnership assets unless Jack Sobel sold

the same on or before December 15, 1961. The appointment of John Bess, as such Trustee and Receiver, was confirmed by a Judgment of the Supreme Court, New York County dated December 29, 1961, which confirmed the arbitration award. John Bess entered upon his duties as Trustee and Receiver and took possession of the country club in Great River, New York. He then caused the purchase contract of the Partnership to be assigned to a Corporation, Timber Point Country Club, Inc., and took title to the country club in the name of that Corporation. An action was commenced by Jack Sobel on behalf of the partnership in the Supreme Court, Suffolk County, to retrieve the real property into the Receivership, but the action was settled by stipulation and an Interlocutory Judgment was entered thereon whereby title was left in Timber Point Country Club, Inc. and John Bess was directed to cause the transfer of the common stock in the corporation to himself, as Trustee and Receiver of the Limited Partnership.

By Notice of Petition dated January 31, 1970, Jack Sobel, on behalf of himself as Limited and General Partner of Great River Country Club Associates, and all other Limited Partners similarly situated, brought on an application in the Supreme

Court, New York County, for a declaration of the rights and duties of John Bess, as Trustee and Receiver of the Partnership, and for a distribution of the common stock in Timber Point Country Club, Inc. to the beneficial owners in the proportion of their respective interests in the Limited Partnership. That Petition was dismissed by the Supreme Court, New York County, but on Appeal, the Judgment of Dismissal was unanimously reversed, but the proceeding on that Petition was stayed pending a determination of an accounting of John Bess, as Trustee and Receiver in the Suffolk County action. Several accountings were filed by John Bess in the Suffolk County action and an unbelievable amount of motions and appeals were required to finally force John Bess to account for the common stock in Timber Point Country Club as an asset of the Receivership. Pursuant to an Order of Reversal of the Appellate Division, Second Department, dated July 7, 1975, John Bess, as Trustee and Receiver, filed an "accounting of the common stock" in which he claimed that his wife, Ina Bess, and he himself, had a beneficial interest in the common stock of Timber Point Country Club of approximately 80% thereof. Objections were filed to that account by Jack Sobel as the sole surviving General Partner of Great River Country Club Associates. Jack

Sobel thereupon made a motion in the Supreme Court, Suffolk County to join all Limited Partners listed in the accounting of the common stock, as partners, to the Accounting Proceeding which was denied, but the Judge (Glickman, J.) set the matter down for trial sua sponte, the trial commenced on November 10, 1974, and after three days, was adjourned. It was the Petitioner-Appellant's contention that Mr. Justice demonstrated personal bias and prejudice and hostility to plaintiff's attorney, and assumed the function of an advocate at the trial, and thereupon, this proceeding was commenced in the Appellate Division, Second Department. The trial is scheduled to be resumed on March 8, 1976.

The Trustee and Receiver has steadfastly contended on all his accounts that he personally was the absolute owner of the common stock in Timber Point Country Club until he was forced to account for it by an Order of Reversal of the Appellate Division dated July 7, 1975. In that contention, he was consistently supported by Mr. Justice Glickman who was twice reversed by the Appellate Division, and who, upon the commencement of the hearing on the accounting on November 10, 1975, still stated off the bench that he "was right on the law" notwithstanding the reversal of the Appellate Division.

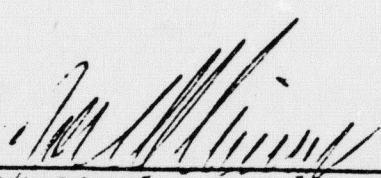
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The accounting before Judge Glickman will require no less than an additional thirty (30) days of actual trial time. The Petitioner-Appellant lacks legal counsel able to sustain such burden and lacks any funds to purchase the stenographic minutes to perfect an Appeal. An application of the Petitioner-Appellant before Mr. Justice Glickman to be granted leave to proceed as a poor person, was denied.

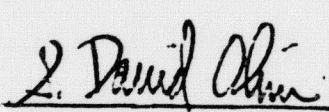
It is respectfully submitted that due process is being denied to the Petitioner-Appellant by the dismissal of the Article 78 proceedings since the economic circumstances are such that the right to appeal from any adverse decision of Mr. Justice Glickman is only an academic privilege and a practical impossibility.

No prior application has been made in this Court for the relief requested herein.

Sworn to before me this
3rd day of March, 1976



Jacob Oliner



S. DAVID OLINER
NOTARY PUBLIC, State of New York
NO. 4504441
Qualified in Westchester County
Expires March 30, 1977

Nos. 97 & 114

In the Matter of Jack Sobel, etc.,
petitioner, v. Hon. DAVID L. GLICKMAN,
a Justice of the Supreme Court, etc.,
respondent.

Proceeding pursuant to CPLR article 78 to prohibit respondent from presiding at the hearing on an accounting and objections thereto in an action in which petitioner is the named plaintiff, and in which the defendants are John Bess and Timber Point Country Club, Inc., and motion by the said John Bess and Timber Point Country Club, Inc. to intervene as parties respondent in the proceeding.

Proceeding dismissed on the merits, without costs. An article 78 proceeding does not lie to remove a judge from hearing a case on the grounds presented.

Motion to intervene denied as academic.

COHALAN, Actin P.J., MARGETT, DAMIANI, SHAPIRO and HAWKINS, JJ.,
concur.

January 16, 1976

IN RE SOBEL v GLICKMAN

Nos. 97, 114

State of New York
County of New York } ss.:

AFFIDAVIT OF SERVICE ON INDIVIDUAL

JACOB OLINER being duly sworn, deposes and says: that he is above the age of 18 years and resides at DOORS 204, 117.

That on the 19th day of May, 1976, at [City of] he served the within in the County of [City of] ~~subpoena on abbreviated Record of Appeal on Non-Veris~~ the judgment debtor, by delivering to and leaving personally with the judgment debtor, a true copy thereof and that a copy of Section 781 of the Civil Practice Act was endorsed upon the copy of the subpoena.

Deponent further says that he knew the person so served as aforesaid to be the individual mentioned and described in said subpoena.

Sworn to before me this 19th day of May 1976

JEREMIAH F. CROSS
Notary Public, State of New York
No. 60-0809925
Qualified in Westchester County
Commission Expires March 30, 1977

JACOB OLINER

our said
the

day of

Court, at the Court House in the County of
19 .

Attorney for Judgment Creditor
(Office and Post Office Address)

READ CAREFULLY:

C. P. A. Section 781. TRANSFER OF PROPERTY BY JUDGMENT DEBTOR OR THIRD PARTY ENJOINED.

Upon the service of the subpoena upon the judgment debtor or any third party who has in his or its possession property or moneys belonging to the judgment debtor or who is indebted to the judgment debtor, such judgment debtor or third party is hereby forbidden to make or suffer any transfer or other disposition of, or to interfere with, any property belonging to the judgment debtor, or to which he may be entitled or which may thereafter be acquired by or become due to said judgment debtor, or to pay over or otherwise dispose of any moneys due or to become due to such judgment debtor, not exempt by law from application to the satisfaction of the judgment, until the further order of the court except that such third party shall not be obliged to withhold the payment of any moneys beyond double the amount claimed in such subpoena by the judgment creditor.

Any person served with said subpoena, who shall violate the provisions of such restraining provision, shall be subject to punishment by the court by fine and imprisonment or either, as and for a contempt. To effect such restraining provision, a copy of this section must be indorsed upon the copy of the subpoena served under this article.

The restraining effect of a subpoena served upon a third party shall not, however, apply to any property, money or indebtedness which appears from the books or records of the third party to belong to or to be due to a person or corporation other than the judgment debtor, unless the third party has knowledge or reason to believe that such property, money or indebtedness belongs to or is due to the judgment debtor; but the court may by order at any stage of the proceeding grant a restraining provision applicable to any such property, money or indebtedness, which is specified in the order, where it is shown to the court's satisfaction by affidavit or other written proof that there is reason to believe that such property, money or indebtedness belongs to or is due to the judgment debtor.

Unless previously vacated by order of the court or by stipulation of the parties, a restraining provision as herein provided shall remain in full force and effect for a period of two years from the date of the service of the subpoena, at which time it shall be deemed vacated for all purposes unless extended by order of the court for good cause shown.